

Clifton Plastics, Inc. and Allied Trade and Bulk Plant Workers, Amusement Workers and Industrial Workers, Local 158 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 4-RC-14862

July 27, 1982

DECISION AND DIRECTION

BY MEMBERS JENKINS, ZIMMERMAN, HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to, and determinative challenges in, an election¹ held on November 12, 1981, and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions² and brief, and hereby adopts the Regional Director's findings³ and recommendations.

DIRECTION

It is hereby directed that the Regional Director for Region 4, pursuant to the Board's Rules and Regulations, Series 8, as amended, within 10 days of the date of this Decision and Direction, open and count the ballots of William Ward, Gerald Perry, Edwin Eilola, Joel Douthwaite, Joseph Bertolini, and Antonio Alvarez, and, thereafter, prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots. In the event that the revised tally of ballots shows that Petitioner has received a majority of

the valid ballots cast, the Regional Director shall issue a Certification of Representative. In the event that the revised tally of ballots shows that Petitioner has not received a majority of the valid ballots cast, the following will be applicable.

[Direction of Second Election omitted from publication.]⁴

MEMBER HUNTER, dissenting:

Some 6 weeks before the election, the Employer sent employees two letters asking to be notified of any threats or harassment directed at them by Teamsters organizers or by employees soliciting for the Teamsters. These requests were motivated by the Employer's past experience—employees had complained about such incidents in connection with a 1980 union campaign—as well as by the Employer's experience with the initial stages of the then current campaign. Indeed, several employees approached the Employer during the initial stage of the 1981 campaign with complaints that Teamsters agents had threatened possible job loss if the employees did not sign authorization cards. Based on the decision in *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981),⁵ the Regional Director concluded, and my colleagues agree, that the election here should be set aside and a second election directed because of the Employer's conduct in making this request. I dissent.

In the first place, it is axiomatic that an employer has every right to maintain discipline and order among employees in the workplace. The Employer here had good reason to believe that "a clear and present danger" to its ability to maintain such an environment was posed by conduct engaged in by Petitioner agents and sympathizers, specifically by threats directed against several employees. In my view, nothing contained in the Employer's response to this perceived threat to its legitimate interest in maintaining discipline can be fairly construed to be objectionable conduct. Indeed the Employer did no more than assure its employees that it would take "appropriate action" to insure a non-coercive environment; it did *not* solicit employees to engage in surveillance concerning their fellow employees or Petitioner organizers, nor did it intimate in any way that there would be reprisals against pro-Petitioner employees engaged in *protected* organizational activity. In short, the manner in which the Employer responded to reports of threats and misconduct in the context of this organizing campaign was plainly reasonable and intend-

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 19 for, and 24 against, the Petitioner; there were 9 challenged ballots.

² In the absence of exceptions thereto, we hereby adopt, *pro forma*, the Regional Director's recommendations regarding the disposition of the challenged ballots.

³ In adopting the Regional Director's finding that the Employer engaged in objectionable conduct, we do not find it necessary to consider the contents of a pamphlet entitled "Clifton Plastics, Inc., Our Employees Want To Know," which the Employer alleges was distributed prior to the filing of the petition herein.

We agree with our dissenting colleague that "an employer has every right to maintain discipline and order among employees in the workplace"; however, we do not agree that an employer may do so by requesting employees to report subjectively offensive conduct since such requests clearly are sufficiently broad to encompass the lawful conduct of employees engaged in protected activities. See, e.g., *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981). Moreover, we note that the Employer's requests herein went beyond the confines of the workplace and extended into the homes of its employees where the Employer has no legitimate interests. As to our dissenting colleague's suggestion that Board policy on this issue ignores the sentiment of employees, the answer is simple and twofold: (1) the fact that some employees might attempt to restrain concerted efforts by others to organize a union cannot justify an employer's restraint or coercion of the protected concerted activity; and (2) by conducting a second election in an atmosphere free of such requests, we are able to assure that we have correctly measured the sentiment of the employees—which, we might add, is our statutory responsibility.

⁴ [Excelsior footnote omitted from publication.]

⁵ As noted by the Regional Director, in *Bil-Mar Foods*, the Board reiterated its view that such statements could cause employees to report on the identity of union activists and also discourage such activists in their campaign.

ed to accommodate the legitimate interests of all employees—those in favor of Petitioner as well as those opposed.

Furthermore, the most salient fact which my colleagues ignore by adhering to *Bil-Mar Foods* and setting aside this election is that, other than the two letters which they find objectionable, there is no basis for finding that this Employer engaged in *any* objectionable conduct. Hence, there is no showing that this election campaign was other than a hard fought contest in which employees were

fairly exposed to the arguments of both sides and, based on their assessment of the merits, made a free and untrammelled election choice. In these circumstances, and particularly in light of this Employer's apparently exemplary observance of employees' Section 7 rights throughout the campaign, I am at a loss to understand how this Board, based on the attenuated and strained rationale of *Bil-Mar Foods*, can ignore the sentiment of employees as expressed in the election. I would overrule *Bil-Mar Foods* and similar decisions. Accordingly, I dissent here.